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THE HONORABLE MATTHEW F. KENNELLY

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

CITY OF CHICAGO, et al.,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants.

No. 1:25-cv-05463

DECLARATION OF KEN WALKER

I, <u>KEN WALKER</u>, declare as follows:

- 1. I am over the age of 18 years, am competent to testify as to the matters in this declaration, and make it based on personal knowledge and my review of relevant records.
- 2. I am the Interim Director of Grants Management, and Innovation ("GMI") for Pima County, Arizona ("Pima County"). I have been in this position since April 30, 2025, but have worked in this department since November 2021. Before joining Pima County, I was at Pima Prevention Partnership (PPP) for more than twenty-five years where I served in the positions of Director of Youth & Family Services and Director of Grants. During my employment with PPP, I wrote and submitted more than 100 competitive applications for funding to federal, state, local and private sources and managed many single and multi-year federal awards.
- 3. As Pima County's Interim GMI Director, I am charged with overseeing and

understanding all aspects of Pima County's grants management operations, including but not limited to, grant applications, grant compliance monitoring and reporting, and tracking grant expenditures and related issues.

PIMA COUNTY

- 4. Located in the American Southwest, covering 9,189 square miles, Pima County has almost nine times the land area of the State of Rhode Island. Pima County shares a 123-mile international border with Mexico. To the south, Pima County borders Santa Cruz County, which has a 54-mile international border with Mexico. To the southeast, Pima County borders Cochise County, which has a 84-mile international border with Mexico.
- 5. With a population of approximately 1.1 million people, Pima County is the second most populous county in Arizona. While the western portion of Pima County is dominated by the Tohono O'odham Nation, an American Indian reservation, Pima County's five municipalities, the largest of which is the City of Tucson, are primarily located in the eastern portion of Pima County. Pima County is also home to a nationally recognized institution of higher education, the University of Arizona.
- 6. Pima County, along with nearby counties Cochise County and Santa Cruz County, shares a border with Mexico.
- 7. Pima County government provides a full range of services local and regional, urban and rural across the County's diverse geography and communities, managing over 7,000 employees and an overall budget of approximately \$1.9 billion dollars. The County operates a regional wastewater system, oversees Pima County voting in local, state, and federal elections, and provides emergency management services. The Pima

County Sheriff provides direct law enforcement services for unincorporated Pima

County as well as countywide services mandated by state law. The County Attorney's

Office, Public Services Department, Justice Courts, and Superior Court manage

prosecution and adjudication of state felony and misdemeanor crimes committed

within the Pima County's boundaries and coordination of crime prevention strategies

and victim recovery services with Pima County cities, police departments, municipal

courts, and community-based organizations. Pima County also provides extensive

public health and mental health services to the Pima County community.

The SSP Grants

- 8. Pima County has had a long history of partnering with the U.S. Department of Homeland Security ("DHS") to enhance safety and security in Pima County.
- 9. To prevent new arrivals from immediately becoming homeless upon release by DHS, Pima County coordinates directly with DHS to transition migrants out of DHS custody and into local services. All migrants served by Pima County had been processed and released by DHS representatives with instructions about an asylum court hearing and with a tracking device in the form of a watch, a cell phone, or an ankle bracelet.
- 10. Pima County served more than 10,000 new arrivals of migrants who were released from DHS custody in April 2023. By December 2023, that number had ballooned: Pima County served over 39,000 legally processed asylum seekers that month, an average of 1,250 people each day. Pima County continued to serve approximately 25,000 migrants each month through May 2024. In total, Pima County stepped up to serve 520,868 migrants released from DHS custody.

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11. Because of the large number of migrants released by DHS into Southern Arizona, FEMA lists Pima County as an eligible entity for multiple grants relating to emergency food, shelter, and services grants based on numbers of migrants entering along the southern Arizona border. In April 2021, Pima County became the sole fiscal agent for federal humanitarian aid funds serving legally processed asylum seekers contacted and then released by U.S. Customs and Border Protection, an agency within DHS, into Pima County (Tucson), Santa Cruz County (Nogales), and Cochise County (Douglas), Arizona. In that role as sole fiscal agent, over the course of about five years, Pima County applied for and was granted funding from the Federal Emergency Management Agency ("FEMA"), an agency of DHS.

- 12. The initial federal funds from 2020 through 2023 were awarded under the FEMA Emergency Food and Shelter ("EFSP") grant program, which was managed by United Way Worldwide through its Emergency Food and Shelter Program National Board. FEMA awarded Pima County and its local partners six separate tranches of EFSP funding.
- 13. The Shelter and Services Program ("SSP") replaced EFSP in FY23 and was managed directly through the FEMA Grants Directorate. All funds were Congressionally appropriated. FEMA awarded Pima County and its partners three separate tranches of SSP funding starting in November 2023.
- 14. All EFSP and SSP funds were Congressionally appropriated. For EFSP and SSP funds, FEMA overlapped humanitarian aid funding performance periods in their attempt to help recipient jurisdictions respond to the unforecastable and fluctuating increases in the number of legally processed asylum seekers released into border

communities by the Department of Homeland Security (DHS). Additionally, FEMA awarded funds retroactively to specific past dates to account for jurisdictions' actual costs that were different from their anticipated costs.

- 15. FEMA awarded to Pima County, directly, a total of \$52,627,402.00 through three separate federal funding opportunities relating to the Shelter & Services Program (collectively the "Pima SSP Grants").
- 16. FEMA issued its first grant award to Pima County under the FY2023 SSP-A, award number EMW-2023-SP-05067, on August 15, 2023, awarding a total of \$12,093,182.00.
- 17. FEMA issued its second grant award to Pima County under the 2024 SSP-A Grant on July 6, 2024, award number EMW-2024-SP-05022, for a total award of \$21,827,581.00.
- 18. FEMA issued a third grant to Pima County in September 2024, award number EMW-2024-SP-05142, through the 2024 SSP-C Grant competitive bid process, awarding a total of \$18,706,639.00. Pima County has not yet incurred any costs or submitted any reimbursement requests for expenses related to this award.
- 19. Between September 2023 and March 2024, Pima County submitted four budget amendment requests under the 2023 Pima SSP Grant, all of which were approved.

 These budget amendments reflected Pima County's use of the Shelter and Services Program funds for food and labor for primary services. In addition, Pima County used 2023 Pima SSP Grant funds to pay (a) costs related to transporting migrants from DHS drop-off points in neighboring international border counties of Santa Cruz County and Cochise County, to Pima County shelter operations in Tucson, and (b) for

- shelter and utilities. Budget amendments were required because of the unpredictable variability in numbers of migrants released by DHS into Pima County.
- 20. Pima County has submitted multiple draw requests under the 2023 Pima SSP Grant pursuant to the approved budget amendments. First, in August 2024, Pima County submitted a reimbursement request. Pima County subsequently resubmitted that draw request due to a calculation error in the original request, for a total amount of \$3,092,423.08.
- 21. To support this draw request, Pima County submitted all required documentation with the reimbursement request through FEMA GO, which included the list of A-numbers for all migrants served by Pima County during the period associated with the request, as well as a complete listing of the itemized expenses and required back-up documentation and invoices for expenses to be reimbursed. The invoices included information about personnel, utilities, and shelter maintenance costs.
- 22. FEMA approved payment for the original request of \$3,092,423.08 on October 18, 2024.
- 23. In November 2024, Pima County received a notice from FEMA, via email, of a "Pima County SSP intent to monitor." The email indicated that FEMA would conduct a financial and programmatic monitoring site visit on January 15, 2025, and requested documents be sent to them for review by December 23, 2024.
- 24. On December 6, 2024, Pima County submitted a second reimbursement request for the 2023 Pima SSP Grant for \$5,771,917.04. Pima County submitted to FEMA all requested documentation on December 23, 2024.
- 25. On January 6, 2025, FEMA informed Pima County via email that the programmatic

monitoring site visit scheduled for January 15, 2025 would now be a "desk review" held on March 12, 2025. FEMA also requested additional documentation, which Pima County submitted.

- 26. On January 24, 2025, FEMA again wrote to Pima County requesting further documentation. Pima County submitted all requested materials in February 2025.
- 27. In late February 2025, a Pima County employee contacted FEMA to inquire about the status of the upcoming desk review. In response, a FEMA representative wrote, "Thank you for your patience. We hope to have additional information for you soon." For two months afterwards, Pima County received no additional communication related to the desk review.
- 28. On March 11, 2025, FEMA sent a letter to Pima County (the "March 11 Letter"). A true and correct copy of the March 11 Letter is attached hereto as Exhibit 1.
- 29. Pima County has only sought reimbursement under the Shelter and Services Program for services provided to migrants whom DHS processed, provided A-Numbers to, and released from DHS custody into the United States.
- 30. On April 1, 2025, Pima County received a letter from FEMA (the "April 1 Letter") terminating the Pima SSP Grants and requiring the submission of closeout paperwork within 120 days of the letter date. A true and correct copy of the April 1 Letter is attached hereto as Exhibit 2.
- 31. Pima County's SSP Grants were issued with a funding freeze, which could be lifted only by submission of budget information and justification documents to obtain a "budget amendment" for the awards.
- 32. On April 24, 2025, Pima County received an email from FEMA (the "April 24

- Email") indicating closeout requirements for Pima County to follow. A true and correct copy of the April 24 Email is attached hereto as Exhibit 3.
- 33. In early May 2025, almost six months after submitting its second reimbursement request for \$5,771,917.04 and close to seven months since FEMA indicated that it would be conducting additional monitoring, Pima County sent a follow-up email to again check on the status of the review and payment. To date, Pima County has not received a response to this inquiry.
- 34. FEMA's actions show that it has eliminated funding for grantee Pima County. FEMA has simultaneously demanded that grantees submit close-out documentation to end the program. In short, FEMA's actions indicate de facto termination of the program without reimbursement of approximately \$9,717,961.16 incurred by Pima County under the Pima SSP Grants.
- 35. By June 24, 2025, Pima County anticipates submitting its third request for reimbursement under the 2023 Pima SSP-A Grant for approximately \$370,519.96 and its request for reimbursement under the 2024 Pima SSP-A Grant for approximately \$3,575,524.16 as part of Pima County's close-out documentation. Combined with the December 6, 2024 request for reimbursement for \$5,771,917.04, Pima County has provided documentation sufficient to support additional reimbursement requests of approximately \$9,717,961.16.

Impacts of the Withholding of Federal Grant Awards

36. Pima County's 2025 special revenue fund and enterprise operating budgets include approximately \$216 million in federal revenue. Some federal funding is received indirectly through the State of Arizona or through another federal grantee like the

City of Tucson. Often, County departments receive federal funding through specific grants that are funded by Congress and awarded by a federal agency for a specific purpose. In 2025, federal revenue represents approximately 13.1% of the County's overall budget.

- 37. These federal grants are a part of Pima County's financial planning and budget, provide funding for project implementation, and help Pima County provide local services consistent with Congressionally appropriated priorities.
- 38. The loss of funding would cause immediate and long-term harm to Pima County's financial standing as the County would be forced to augment the loss of the grant revenue with general fund balance reserves which would deplete the reserve balance below established policy levels. This would diminish future financial resources as the County replenishes the fund balance reserve thereby limiting our funding options for County-wide operations. It could also lead to an increase in property taxes which would have a negative and harmful impact on Pima County residents should policymakers decide to increase the tax rates to recover the loss of the grant revenue/funding.
- 39. Additional ramifications could include a rating downgrade which would increase the cost of borrowing to the County and have a detrimental impact to the County's long-term financial plan.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 49 day of June, 2025.

KEN WALKER

U.S. Department of Homeland Security Washington, DC 20472



March 11, 2025

Angela Preciado Pima County 130 W Congress St Fl 3 Tucson, AZ 85701

Re: Remedy for Noncompliance Letter, Shelter and Services Program (SSP)

Grant Number: EMW-2023-SP-05067

Period of Performance: March 1, 2023 – September 30, 2025

Award amount: \$12,093,182.00

Grant Number: EMW-2024-SP-05022

Period of Performance: October 1, 2023 – September 30, 2026

Award amount: \$21,827,581.00

Grant Number: EMW-2024-SP-05142

Period of Performance: October 1, 2023 – September 30, 2026

Award amount: \$18,706,639.00

Dear Angela Preciado:

The purpose of this letter is to notify you that DHS/FEMA is temporarily withholding payments to your organization for the grant award(s) named above, pursuant to 2 C.F.R. § 200.339(a) and is instituting specific conditions on your award pursuant to 2 C.F.R. § 200.208.

Findings

The Department of Homeland Security has significant concerns that SSP funding is going to entities engaged in or facilitating illegal activities. The Department is concerned that entities receiving payment under this program may be guilty of encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law, 8 U.S.C. § 1324(a)(1)(A)(iv); transporting or moving illegal aliens, *id.* § 1324(a)(1)(A)(ii); harboring, concealing, or shielding from detection illegal aliens, *id.* § 1324(a)(1)(A)(iii); or applicable conspiracy, aiding or abetting, or attempt liability respecting these statutes.

DHS/FEMA is required to administer its grant awards so as to ensure that federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution,

applicable federal statutes, and regulations. 2 C.F.R. § 200.300(a). The terms and conditions of the award allow the Department to institute appropriate remedies for noncompliance which include temporarily withholding payments or suspending or terminating the award for a failure to comply with the conditions of the award or applicable federal statutes. See 2 C.F.R. §§ 200.208; 200.340; and 200.339(a).

Remedy Action(s) and Specific Condition(s)

Non-federal entities receiving financial assistance from DHS/FEMA are required to comply with requirements in the terms and conditions of their awards or subawards, including the terms set forth in applicable federal statutes, regulations, Notice of Funding Opportunities, and policies. Throughout the award lifecycle or even after an award has been closed, DHS/FEMA may discover potential or actual noncompliance on the part of a recipient or subrecipient. This potential or actual noncompliance may be discovered through routine monitoring, audits, closeout, or reporting from various sources. In the case of any potential or actual noncompliance, DHS/FEMA may place special conditions on an award per 2 C.F.R. § 200.208 and § 200.339, DHS/FEMA may place a hold on funds until the matter is corrected, or additional information is provided per 2 C.F.R. § 200.339, or it may do both.

Based on the concerns described above, DHS/FEMA will conduct additional monitoring and review of your award(s) as permitted by the terms and conditions of the award(s) to ensure compliance with all terms and conditions of your award(s). During this time, payments under the grant award(s) will be temporarily held. Further, you are not permitted to incur any additional costs under the grant until notified further by DHS/FEMA.

To assist DHS/FEMA in conducting this review, please respond within 30 days with the following information that your organization has not already submitted to DHS/FEMA:

- 1. All documents regarding the aliens with whom your organization and your subrecipients and contracts interacted with in carrying out the scope of your SSP award, including their names and contact information; and a detailed and descriptive list of specific services provided, and proof of provision of these services; or
- 2. A written statement that your organization has already submitted all of the information identified in No. 1, above, to DHS/FEMA.

Additionally, to ensure compliance with all applicable federal laws and regulations in the execution of your SSP award, FEMA will be imposing an additional special condition that requires you, and the executive officers of any subrecipient or contractor that receives funding under the award, to sign an affidavit attesting that you and they have not participated in, and have no knowledge or suspicion that anyone in your or their organizations participated in, any crime cognizable under 8 U.S.C. §§ 1324(a)(1)(A)(iv); 1324(a)(1)(A)(ii); or 1324(a)(1)(A)(iii). Additional details regarding this new requirement will be forthcoming shortly. Upon the conclusion of that monitoring, FEMA will notify you of the results and any other remedies for noncompliance or specific conditions, as appropriate.

Opportunity to Appeal

Your organization has the right to appeal this action within 60 days of the date of this letter. The appeal must include the following information:

- 1. Grant number(s).
- 2. Recipient name.
- 3. A written explanation, on your organization's letterhead, explaining why you believe FEMA's decision to temporarily withhold payments to your organization for the grant award(s) named above, pursuant to 2 C.F.R. § 200.339(a), or to prohibit your organization from incurring additional costs under the grant, is not correct.
- 4. Copies of any documents or statements that support your position that FEMA's decision to temporarily withhold payments to your organization for the grant award(s) named above, pursuant to 2 C.F.R. § 200.339(a) is not correct.

Written appeals should be sent directly to FEMA-SSP@fema.dhs.gov.

The FEMA Grant Programs Directorate is available to respond to any questions you may have. Please send all information and communications regarding this notification to <u>FEMA-SSP@fema.dhs.gov</u>.

Sincerely,

Cameron Hamilton

Senior Official Performing the Duties of the

Administrator

Exhibit 2

U.S. Department of Homeland Security Washington, DC 20472



April 1, 2025

Pima County 130 W Congress St Fl 3 Tucson, AZ 85701

Re: Termination Notice: Shelter and Services Program

Grant Number: EMW-2023-SP-05067 Award amount: \$12,093,182.00

Grant Number: EMW-2024-SP-05022 Award amount: \$21,827,581.00

Grant Number: EMW-2024-SP-05142 Award amount: \$18,706,639.00

Dear

This letter serves as official notice that the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) is terminating your Shelter and Services Program (SSP) grant awards identified above, effective immediately. DHS/FEMA is making this termination pursuant to the terms and conditions of the grant awards. These terms and conditions include the SSP Notice of Funding Opportunity (NOFO) that applies to your grant and 2 C.F.R. § 200.340(a)(2) (2020), which authorizes DHS/FEMA to terminate your awards "to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities."

Your agency received the grant awards identified above to carry out the purposes of the SSP identified in the awards' respective NOFOs. The Department, consistent with President Trump's direction, is focused on advancing the essential mission of enforcing immigration laws and securing the border. Consequently, grant programs that support, or have the potential to support, illegal immigration through funding illegal activities or support for illegal aliens that is not consistent with DHS's enforcement focus do not effectuate the agency's current priorities. The previous agency priorities under the FYs 2023 and 2024 SSP were to provide funding to non-federal entities to provide shelter, food, transportation, acute medical care, and personal hygiene supplies for individuals released from DHS short-term holding facilities. The individuals receiving these services often have no legal status and are in the United States unlawfully, such as those awaiting removal proceedings. This, in turn, provides support for illegal aliens and is not consistent with DHS's current priorities. For these reasons, DHS/FEMA is terminating your awards.

rant Award

Notice of Grant Award Termination: Shelter and Services Program Page 2

In accordance with the terms of your awards, including 2 C.F.R. §§ 200.344-345 (2020), you must complete all closeout procedures. This includes, among other things, submitting all financial, performance, and other required reports within 120 calendar days from the date of this letter and promptly refunding any funding paid to date that exceed the amount set forth in your final federal financial report. FEMA previously issued a Remedy of Noncompliance Letter on March 11, 2025, informing you that you were not permitted to incur any additional costs under the awards until further notice from DHS/FEMA. This means that, during the closeout process, your final federal financial report must include all allowable costs incurred before the date of the Remedy of Noncompliance Letter but must not include costs incurred after the date of that Remedy of Noncompliance Letter.

FEMA will review all closeout documentation in accordance with 2 C.F.R. § 200.344. As part of its review, FEMA will determine the final allowable costs for your awards. This will include evaluating whether all submitted costs incurred before the date of the Remedy of Noncompliance Letter are necessary, allocable, and reasonable. FEMA will notify you of the final allowable costs for the awards and, if the payments made exceed the final allowable costs, you will need to promptly refund the difference. If, on the other hand, FEMA determines that the total allowable costs exceed the amount paid to date, then FEMA will make a final payment for that difference. FEMA will close the awards when it determines that all administrative actions and required work have been completed. Closeout will not affect DHS/FEMA's ability to later disallow costs and recover funds for the grant awards based on any later post-closeout audit or review.

If you wish to object to the termination of this award, you may challenge the termination in writing and provide any information or documentation relevant to your challenge. You must submit any written objections no later than 30 days of this letter. There will be no other opportunity to appeal this action to Department of Homeland Security.

The FEMA Grant Programs Directorate is available to respond to any questions you may have. Please send all information and communications regarding this notification to <u>FEMA-SSP@fema.dhs.gov</u>.

Sincerely, Hand

Cameron Hamilton Senior Official Performing the Duties of the Administrator
 From:
 FEMA-SSP

 To:
 FEMA-SSP

Subject: UPDATE: Regarding Submission of Award Closeout Materials

Date: Thursday, April 24, 2025 1:10:23 PM

Attachments: <u>image002.png</u>

SF-428 Tangible Personal Property Report.pdf

<u>SF-428-B Tangible Personal Property Report – Final Report.pdf</u> <u>SF-428-S Tangible Personal Property Report – Supplemental Sheet.pdf</u>

SF-425 Final SSP FFR.pdf

SSP Performance Progress Report Template.xlsx

CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Greetings,

This message provides instructions for how to submit closeout materials for your SSP award(s). Please refer to the Termination Notice letter your organization received on April 1, 2025, for additional information.

As the Termination Notice letter states, you must complete all closeout procedures. You will not be able to submit closeout materials in FEMA GO. Please submit your closeout documentation via email to the SSP Branch at fema.dhs.gov. If you have any personally identifiable information (PII) in your documentation that you would like to submit, please password protect your file and send via encrypted email. Then, follow-up with a separate encrypted email to disclose the password(s) to the protected file(s).

The closeout requirements as outlined in the terms and conditions for this grant award are as follows:

- 1. Final Performance Progress Report (PPR)
 - a. Please use the attached PPR template to submit your final PPR.
- 2. Final Federal Financial Report (FFR) Standard Form (SF-425)
 - a. Please use the attached FFR template to submit your final FFR.
- 3. Final request for payment, if applicable
- 4. Federal owned Tangible Personal Property (SF-428, 428-B, 428-S), if applicable
 - a. Please see attached forms to submit your final SF-428(s).
 - b. Due to the Uniform Guidance changes that took effect on October 1, 2025, the SF-428-B Tangible Personal Property Report Final Report form on Grants.gov has been updated to include the new property definition and threshold of \$10,000. Please note, SSP recipients fall under the previous definition and threshold of \$5,000.

- 5. Closeout Narrative Report document, containing the following:
 - a. A qualitative narrative summary of award accomplishments; and
 - b. Any additional information that is deemed necessary to explain award accomplishments and impact of the award.
- 6. If applicable, recipients should also include in the Closeout Narrative Report document an Inventory of Renovation Projects:
 - a. The recipient must provide a Word document that covers a brief narrative and an inventory of any renovation projects, if applicable.
 - b. If any SSP funds were used for renovations or modifications to existing facilities, the recipient must submit an inventory of all projects. The inventory of all projects should include a brief narrative describing what renovations or modifications to existing facilities occurred during the period of performance and include pictures of the finished projects.

You will be notified when the award is closed. Please direct any questions related to the closeout process to the SSP Branch at fema-ssp@fema.dhs.gov.

Best,

Shelter and Services Program
Shelter and Services Program Branch | National Programs Division | Office of Grants Administration | Resilience
fema-ssp@fema.dhs.gov

Federal Emergency Management Agency

fema.gov

